

**U.S. Department of Justice**

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

January 21, 2025

BY ECF

The Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Knight First Amendment Institute at Columbia University v. U.S. Dep't of Education.*, No. 24 Civ. 8393 (PAE)

Dear Judge Engelmayer:

The parties write respectfully to provide a status report in the above-named action brought pursuant to the Freedom of Information Act ("FOIA"), in accordance with the Court's direction at the initial conference held on December 10, 2024. The parties are scheduled to appear for a status conference on Tuesday, January 28, 2025, at 2:30 p.m.

Plaintiff's FOIA request seeks records reflecting "guidance DOE has provided to post-secondary institutions concerning their obligations under Title VI to ensure nondiscrimination based on shared ancestry or ethnic characteristics." *See* ECF 1 (Complaint) ¶ 6. As outlined at the initial conference, the FOIA request potentially implicates two categories of records within DOE's Office of Civil Rights ("OCR"): policy records and investigative records. DOE made an initial production of responsive records on December 6, 2024, consisting of links to five publicly available policy guidance documents and a PowerPoint presentation that OCR has presented as technical assistance to universities. Over the past six weeks, DOE has conducted a number of supplemental searches, as detailed below.

Policy Records: DOE has completed the following supplemental searches for potentially responsive policy records:

- (i) OCR conducted a search of the OCR@ed.gov email box and identified two additional responsive records, consisting of an inquiry sent to the OCR@ed.gov mailbox and OCR's response. These records were processed and produced to Plaintiff on January 13, 2025.
- (ii) The Title VI team of OCR's Program Legal Group ("PLG") is in the process of conducting a further review of its correspondence logs.

- (iii) All seven members of PLG's Title VI team were interviewed and, where appropriate, conducted supplemental searches of their records. No further responsive records were located as a result of these searches.
- (iv) Eighteen OCR staff who participated in providing technical assistance to post-secondary institutions regarding discrimination based on shared ancestry or ethnic characteristics were interviewed and, where appropriate, conducted supplemental searches of their records.¹ DOE is in the process of reviewing records identified during these searches to determine if they are responsive to the FOIA request.
- (v) OCR also followed up on leads identified during the above-described searches. As a result of those leads, searches were performed of the emails of the Assistant Secretary for Civil Rights, her Special Assistant, and the Deputy Assistant Secretary for Policy. DOE is in the process of reviewing records identified during those searches to determine if they are responsive to the FOIA request.

Investigative Records: Since the initial conference, the parties have met and conferred, and DOE agreed to conduct searches of the investigatory files relating to complaints that were investigated and the investigations had been completed. As of mid-December, DOE had identified ten such closed investigations. DOE has since completed searches of the files relating to those closed investigations. DOE is in the process of reviewing records identified during these searches to determine if they are responsive to the FOIA request.

Since mid-December, DOE has identified 17 additional investigations that have been closed, including cases that have been closed in recent weeks. Accordingly, DOE intends to conduct one further supplemental search of investigatory records that will include these additional 17 cases and any other cases that are closed by the time of the commencement of this supplemental search. *See N.Y. Times Co. v. U.S. Dep't of Justice*, 756 F.3d 100, 124 (2d Cir. 2014) (affirming DOJ's use of date of commencement of search as search cut-off date). DOE expects to complete this final search by January 23, 2025. Thereafter, DOE will review the records identified in the searches of investigatory files to determine whether any of the records are responsive to the FOIA request.

¹ Interviews have been scheduled for this week with two additional OCR personnel. OCR was unable to interview one individual who participated in technical assistance training because that individual has retired. However, OCR was able to interview other individuals who participated in the same training.

We thank the Court for its consideration of this letter.

Respectfully submitted,

DANIELLE R. SASSOON
United States Attorney
for the Southern District of New York

By: /s/ Jessica F. Rosenbaum
SARAH NORMAND
JESSICA F. ROSENBAUM
Assistant United States Attorneys
86 Chambers Street, Third Floor
New York, NY 10007
Tel.: (212) 637-2709/2777
Email: sarah.normand@usdoj.gov
jessica.rosenbaum@usdoj.gov

Counsel for Defendant

By: /s/ Scott Wilkens
SCOTT WILKENS
Knight First Amendment Institute
at Columbia University
475 Riverside Drive, Suite 302
New York, NY 10115
Tel.: (646) 745-8500
Email: scott.wilkens@knightcolumbia.org

Counsel for Plaintiff